

# Slert Case Reaches State Supreme Court

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Lewis County Deputy Prosecutor Eric Eisenberg on Thursday told the Washington State Supreme Court that alleged murderer Kenneth Slert received a fair, public trial and urged the justices to re-examine a Court of Appeals ruling that overturned Slert's conviction.

If the Court of Appeals decision stands, Slert will likely head back to the courtroom for his fourth trial.



In a decade-long string of legal mishaps, Slert has three times been convicted of murder, and three times had his convictions overturned. He is accused of shooting and killing a 53-year-old man during a whisky-fueled altercation at an Ashford campground.

Slert, 64, could wait a year or longer for the Supreme Court decision. His is one in a flurry of open, public-trial related cases currently under consideration by the court. The justices are expected to bundle the rulings and issue them simultaneously.

Their decisions will clarify how Washington state courts interpret the Sixth Amendment.

"They have a lot of difficult decision making ahead," Eisenberg said Thursday. "This has been building for several years — over the last two years, in particular, open courts has been a hot topic in appellate law."

"The sort of ground under the open courts cases is shifting as we speak," he said.

During Slert's 2010 trial, the judge, prosecutor and defense attorney met in the judge's chambers and dismissed four jurors, based on the answers they provided in a juror

questionnaire. The court was not made aware of why it was temporarily closed, and Slert was not present for the judge and counsels' conference.

The jury — after only two hours of deliberation following a seven-day trial — found Slert guilty of second-degree murder.

Slert appealed his third conviction on the grounds that the closed-door conference violated his right to be present at all critical stages of the trial.

The Court of Appeals, Division II, agreed and overturned Slert's conviction, deeming the trial unconstitutional for two reasons: the trial court violated Slert's right to be present during jury selection; and, the trial court violated the requirement that criminal trials be open and public.

In its appeal to the Supreme Court, the Lewis County Prosecutor's Office argued that the meeting did not need to be public and that any closure was minimal and harmless.

"Scrapping Slert's third murder trial because of this small defect is not required by the state or federal constitutions' requirements of open justice," Eisenberg said in court documents, "and doing so undermines the goal that those provisions seek to foster."

"It unfairly benefits the defendant," he said, "and wastes the significant resources required to conduct criminal trials."

Eisenberg on Thursday told the Supreme Court justices that the Court of Appeals applied a precedent set by an earlier case, *State v. Irby*, too narrowly.

In *Irby*, the Supreme Court held that an email exchange between the court and counsel, which resulted in the dismissal of several jurors, violated the defendant's right to be present.

"Their interpretation was that *Irby* prohibits all off the record conversation," Eisenberg said in an interview. "I think it's much less broad and not about that at all."

But according to his defense attorney, Jodi Backlund, Slert should receive a new trial, no matter what the Supreme Court's decision.

When the Supreme Court agreed to take on Slert's case, it said it would address only the issue of the public's right to be present.

Because the Court of Appeals' decision regarding Slert's right to be present stands, Slert must be allowed back into Lewis County Superior Court, Backlund argued.

Eisenberg, however, said he has requested the Supreme Court overturn the first issue and address the second by composing an advisory document for the Court of Appeals, explaining why it was mistaken in its decision.

On Oct. 23, 2000, Slert was camping in East Lewis County when a man named John Benson drove into his campsite.

The two were strangers, but Benson invited Slert into his truck to share some whiskey.

According to court documents, the interaction between the men deteriorated and Slert eventually shot and killed Benson.

At the time, Slert claimed self-defense, but later gave inconsistent accounts of the altercation.

According to court documents, the physical evidence suggested an execution-style killing at close range.

Slert later told a fellow inmate that he killed Benson because the truck driver, and father of five, had come on to him.

In 2005, the state charged and convicted Slert of second-degree murder. He was sentenced to 23 years and three months in prison.

That conviction was overturned because, according to the appeals court, the trial court erred in rejecting one of Slert's proposed self-defense instructions.

Slert was convicted again in 2009.

That conviction was overturned because Lewis County Superior Court Judge Nelson Hunt acknowledged he knew officers and attorneys involved in the case and should have recused himself, thus violating the appearance of fairness doctrine, according to court documents.

Slert has been incarcerated since 2003, when he was charged with Benson's murder. He is nearly halfway through his 22-year prison sentence.